

State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar

ELINA KREDITOR
DEPUTY TRIAL COUNSEL
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Case Number (s)
07-H-11874

(for Court's use)

PUBLIC MATTER

FILED

DEC 22 2009

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

Bar # 250641

Counsel For Respondent

THOMAS R. BRADFORD
100 FIRST STREET, SUITE 300
BURBANK, CA 91502
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Submitted to: **Settlement Judge**

Bar # 110230

In the Matter Of:
SCOTT C. MCKEE

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND
DISPOSITION AND ORDER APPROVING

ACTUAL SUSPENSION

Bar # 154077

A Member of the State Bar of California
(Respondent)

PREVIOUS STIPULATION REJECTED

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted October 17, 1991.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 13 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



(Do not write above this line.)

- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline** [see standard 1.2(f)]
- (a) State Bar Court case # of prior case 04-O-15360.
 - (b) Date prior discipline effective August 23, 2005.
 - (c) Rules of Professional Conduct/ State Bar Act violations: rule 3-700(A)(2) of the Rules of Professional Conduct.
 - (d) Degree of prior discipline Private Repeval.
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

(Do not write above this line.)

- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted in good faith.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities. SEE ATTACHMENT TO STIPULATION REGARDING FACTS, CONCLUSIONS OF LAW AND DISPOSITION.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct. SEE ATTACHMENT TO STIPULATION REGARDING FACTS, CONCLUSIONS OF LAW AND DISPOSITION.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

(Stipulation form approved by SBC Executive Committee 10/16/00. Revised 12/16/2004; 12/13/2006.)

Actual Suspension

Additional mitigating circumstances

D. Discipline:

(1) **Stayed Suspension:**

- (a) Respondent must be suspended from the practice of law for a period of two years.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
 - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
 - iii. and until Respondent does the following:
- (b) The above-referenced suspension is stayed.

(2) **Probation:**

Respondent must be placed on probation for a period of five years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) **Actual Suspension:**

- (a) Respondent must be actually suspended from the practice of law in the State of California for a period of 60 days.
- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
 - ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
 - iii. and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of

- (4) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
 - No Ethics School recommended. Reason: .
- (9) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) The following conditions are attached hereto and incorporated:
 - Substance Abuse Conditions Law Office Management Conditions
 - Medical Conditions Financial Conditions

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
 - No MPRE recommended. Reason: .

(Do not write above this line.)

- (2) **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) **Other Conditions:** See Attachment to Stipulation Re Facts, Conclusions of Law and Disposition

In the Matter of
SCOTT C. MCKEE

Case number(s):
07-H-11874

A Member of the State Bar

Financial Conditions

a. Restitution

- Respondent must pay restitution (including the principal amount, plus interest of 10% per annum) to the payee(s) listed below. If the Client Security Fund ("CSF") has reimbursed one or more of the payee(s) for all or any portion of the principal amount(s) listed below, Respondent must also pay restitution to CSF in the amount(s) paid, plus applicable interest and costs.

Payee	Principal Amount	Interest Accrues From
Elaine A. Rogers Wertz, McDade, Wallace, Moot & Brower, APC obo Holland Silver, Inc. 945 Fourth Ave San Diego, CA 92101	\$4,682.25	May 23, 2006

- Respondent must pay above-referenced restitution and provide satisfactory proof of payment to the Office of Probation not later than **15 days prior to the expiration of the period of probation.**

b. Installment Restitution Payments

- Respondent must pay the above-referenced restitution on the payment schedule set forth below. Respondent must provide satisfactory proof of payment to the Office of Probation with each quarterly probation report, or as otherwise directed by the Office of Probation. No later than 30 days prior to the expiration of the period of probation (or period of reproval), Respondent must make any necessary final payment(s) in order to complete the payment of restitution, including interest, in full.

Payee/CSF (as applicable)	Minimum Payment Amount	Payment Frequency
Elaine A. Rogers Wertz, McDade, Wallace, Moot & Brower, APC obo Holland Silver, Inc. 945 Fourth Ave San Diego, CA 92101	\$150.00	monthly

c. Client Funds Certificate

1. If Respondent possesses client funds at any time during the period covered by a required quarterly report, Respondent must file with each required report a certificate from Respondent and/or a certified public accountant or other financial professional approved by the Office of Probation, certifying that:
- a. Respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Clients' Funds Account";

- b. Respondent has kept and maintained the following:
- i. A written ledger for each client on whose behalf funds are held that sets forth:
 1. the name of such client;
 2. the date, amount and source of all funds received on behalf of such client;
 3. the date, amount, payee and purpose of each disbursement made on behalf of such client; and,
 4. the current balance for such client.
 - ii. a written journal for each client trust fund account that sets forth:
 1. the name of such account;
 2. the date, amount and client affected by each debit and credit; and,
 3. the current balance in such account.
 - iii. all bank statements and cancelled checks for each client trust account; and,
 - iv. each monthly reconciliation (balancing) of (i), (ii), and (iii), above, and if there are any differences between the monthly total balances reflected in (i), (ii), and (iii), above, the reasons for the differences.
- c. Respondent has maintained a written journal of securities or other properties held for clients that specifies:
- i. each item of security and property held;
 - ii. the person on whose behalf the security or property is held;
 - iii. the date of receipt of the security or property;
 - iv. the date of distribution of the security or property; and,
 - v. the person to whom the security or property was distributed.
2. If Respondent does not possess any client funds, property or securities during the entire period covered by a report, Respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, Respondent need not file the accountant's certificate described above.
3. The requirements of this condition are in addition to those set forth in rule 4-100, Rules of Professional Conduct.

d. Client Trust Accounting School

- Within one (1) year of the effective date of the discipline herein, Respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, and passage of the test given at the end of that session.

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: SCOTT C. MCKEE

CASE NUMBER(S): 07-H-11874

FACTS AND CONCLUSIONS OF LAW

Scott C. McKee ("Respondent") admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

I. Facts

1. On or about August 1, 2005, the Hearing Department of the State Bar Court filed an order approving a stipulation regarding facts, conclusions of law and disposition in State Bar Court case no. 04-O-15360 and imposing a private reproof with conditions set forth in the stipulation (the "reproof order").
2. Respondent received a copy of the reproof order. The reproof became effective on August 23, 2005.
3. Pursuant to the reproof order, Respondent was required to comply with specific terms and conditions including, but not limited to, the following:
 - a. to comply with the conditions attached to the reproof for a period of one (1) year;
 - b. to make restitution within nine (9) months from the effective date of discipline (by on or about May 23, 2006), in the principal amount of \$4,682.25;
 - c. to submit to the Office of Probation written quarterly reports each January 10, April 10, July 10 and October 10, of the condition period attached to the reproof, certifying under penalty of perjury whether he had complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of the reproof during the preceding calendar quarter;
 - d. to submit to Probation a final report no earlier than twenty (20) days before the last day of the condition period and no later than the last day of the condition period.
4. Respondent failed to comply with all conditions of the aforementioned private reproof, as follows:
 - a. Respondent failed to timely file the first quarterly report. Respondent filed his October 2005 quarterly report on or about October 27, 2005.
 - b. Respondent failed to timely file his second, third and fourth quarterly reports due on January 10, April 10 and July 10, 2006 respectively. Respondent filed all three reports on August 3, 2006.
 - c. Respondent failed to file his final report due by August 23, 2006.
 - d. Respondent failed to provide satisfactory proof of restitution by May 23, 2006.

- e. To date, Respondent failed to pay restitution.

II. Conclusions of Law

By failing to comply with all conditions of the private reproof, Respondent violated rule 1-110 of the Rules of Professional Conduct.

PENDING PROCEEDINGS

The disclosure date referred to, on page 2, paragraph A(7), was November 23, 2009.

PARTIAL WAIVER OF COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of November 23, 2009, the costs in this matter are \$4,569.00. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

Respondent further acknowledge that the Office of the Chief Trial Counsel has informed respondent that the Office of the Chief Trial Counsel will partially waive costs in this matter in light of Respondent's financial and medical condition.

Respondent's costs have been reduced to \$1,983.00. Respondent is to pay such costs in equal amounts over the three membership billing cycles following the effective date of discipline in this matter.

CONDITIONS OF PROBATION

Should Respondent file a petition for early termination of Probation, the Office of the Chief Trial Counsel will not oppose such a petition, provided the following conditions are met:

- a) Respondent has completed a minimum of three years of the five year Probation term;
- b) Respondent has fully paid the principal restitution amount of \$4,682.25 and all interest accrued since May 23, 2006;
- c) Respondent has complied with all conditions of Probation;
- d) Respondent has paid all disciplinary costs associated with this matter.

MITIGATING CIRCUMSTANCES

In January 2003, Respondent was diagnosed with a terminal illness. Although the condition is terminal, Respondent and his physicians have been managing the illness with medication. Since the diagnosis, Respondent has been suffering from severe depression. As a result of his illness, Respondent's primary source of income is social security assistance of approximately \$900 per month. Respondent also receives food stamps and renter's assistance. Respondent's mental and physical conditions has made it impossible to maintain a full time law practice and earn the funds necessary to timely pay restitution as contemplated by the conditions of the private reproof in State Bar Case No. 04-O-15360.

AGGRAVATING CIRCUMSTANCES

Standards 1.2(b)(i) and 1.7(a):

Standard 1.2(b)(i) provides that the existence of prior record of discipline and the nature and extent of that record must be considered in aggravation. Respondent was privately reprovved on August 1, 2005 pursuant to a stipulation resolving State Bar Case No. 04-O-15360.

Standard 1.7(a) provides. “[T]he degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.”

AUTHORITIES SUPPORTING DISCIPLINE

A. STANDARDS

Standard 2.9 provides that a willful violation of rule 1-110, Rules of Professional Conduct, shall result in suspension.

Standard 1.7(a) provides that where a member has previously been found culpable of any misconduct, the degree of discipline imposed shall be greater than that imposed in the prior proceeding.

B. CASELAW

In *Conroy v. State Bar* (1990) 51 Cal 3d. 799, Respondent was disciplined for failure to take and pass the California Professional Responsibility Examination within one year of the private reprovral period. Respondent did take and pass the examination at the next available opportunity, which was about two months before the State Bar initiated a second disciplinary proceeding against him. In aggravation, the Court considered Respondent’s prior record (the private reprovral stemmed from misconduct in three client matters); his failure to participate in disciplinary proceedings and his failure to acknowledge the wrongfulness of his actions. The Supreme Court adopted the Review Department’s recommendation of one year stayed suspension and one year probation, conditioned on 60 days actual suspension.

(Do not write above this line.)

In the Matter of SCOTT C. MCKEE	Case number(s): 07-H-11874
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

12-1-09
Date


Respondent's Signature

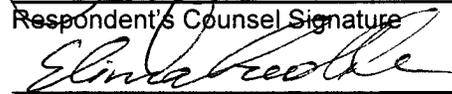
SCOTT C. MCKEE
Print Name

12/1/09
Date


Respondent's Counsel Signature

THOMAS R. BRADFORD
Print Name

12/3/09
Date


Deputy Trial Counsel's Signature

ELINA KREDITOR
Print Name

(Do not write above this line.)

In the Matter Of SCOTT C. MCKEE	Case Number(s): 07-H-11874
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ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

12-21-09
Date


Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on December 22, 2009, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

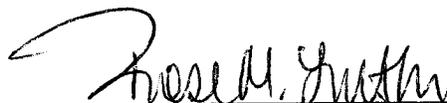
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

THOMAS ROBERT BRADFORD, ESQ.
PETERSON & BRADFORD LLP
100 N 1ST ST STE 300
BURBANK, CA 91502

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ELINA KREDITOR, ESQ., Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on December 22, 2009.



Rose Luthi
Case Administrator
State Bar Court